

consistent with the protection of investors and the public interest because such waiver would permit the Exchange to immediately update its rules to reflect that the compliance date for Regulation NMS has been changed to March 5, 2007. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>13</sup>

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-005 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2007-005 and should be submitted on or before March 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55337; File No. SR-NYSE-2006-04]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto Relating to NYSE Rule 116 ("Stop" Constitutes Guarantee) and NYSE Rule 123B (Exchange Automated Order Routing Systems)

February 23, 2007.

#### I. Introduction

On February 9, 2006, the New York Stock Exchange LLC (f/k/a New York Stock Exchange, Inc.) ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend NYSE Rule 116 ("Stop" Constitutes Guarantee) and NYSE Rule 123B (Exchange Automated Order Routing Systems) regarding a specialist's ability to "stop" stock and report such a transaction. On April 5, 2006, NYSE filed Amendment No. 1 to the proposed rule change. On September 8, 2006, NYSE filed Amendment No. 2 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on October 18, 2006.<sup>3</sup> The Commission received one comment

regarding the proposal.<sup>4</sup> This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

#### II. Description of the Proposal

NYSE Rule 116 provides that an agreement by a member to "stop" stock at a specified price constitutes a guarantee of a purchase or sale by the member of the security at that price. Paragraph .30 in the Rule's Supplementary Material provides three circumstances in which a specialist may stop stock, including: (i) At the opening or reopening of trading in a stock; (ii) when a broker in the trading crowd is representing another order at the stop price; or (iii) when requested to by another member.<sup>5</sup> The practice of stopping stock by specialists on the Exchange refers to a guarantee by a specialist that an order he or she receives will be executed at no worse a price than the contra side price in the market at the time the order was stopped, with the understanding that the order may in fact receive a better price.

The Exchange proposes to remove the provisions in NYSE Rule 116.30 that permit a specialist to "stop" stock. According to the Exchange, the practice of specialists stopping stock makes less sense in the Hybrid Market, primarily due to the dynamics of increased speed of trading and automated functioning of the market. The Exchange further stated that the procedures in NYSE Rule 116.30(3) for granting stops are not an efficient mechanism for seeking price improvement an automated market due to the time required to perform the current manual procedures.

#### III. Comment Summary

The Commission received one comment letter on the proposal,<sup>6</sup> to which NYSE has filed a response letter.<sup>7</sup> In the comment letter, the commenter argued the proposal is not in the public interest because the Hybrid Market, and specifically NYSE's Auction Market and Auction Limit Orders, do not provide investors with the price improvement opportunities that the NYSE's auction market did. The commenter stated that he believed that specialists in the Hybrid Market have been relieved of

<sup>4</sup> See letter from George Rutherford, Consultant, dated April 24, 2006 to Commission's rule-comments e-mail.

<sup>5</sup> A specialist may only stop stock when requested to by another member if certain other conditions are met. See Exchange Rule 116.30(3).

<sup>6</sup> See note 4 *supra*.

<sup>7</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Commission, dated January 19, 2007.

<sup>13</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 54592 (October 12, 2006), 71 FR 61524.

their responsibility to obtain price improvement for orders.

In its response letter, NYSE noted that specialists are not currently obligated to stop stock and further noted that, in fact, specialists infrequently choose to stop stock. NYSE reiterated its belief that there are many opportunities for price improvement in the Hybrid Market and stated that specialists were not "being relieved of their responsibility to obtain price improvement." The Exchange argued that it was eliminating a practice that its data showed was rarely used. The Exchange also argued that retaining the manual process for the specialist to stop stock would increase specialist risk if used.

The commenter also asserted that NYSE could easily reprogram its systems to replicate electronically the manual practice of stopping stock. In response, NYSE disagreed, indicating that there are difficulties inherent in maintaining the stopping stock functionality amid systems designed to enable increased automatic executions. Further, NYSE argued that the decision to remove systemic support for stopped orders was based in part on data that showed that specialists do not stop stock frequently.

#### IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>8</sup> and, in particular, the requirements of Section 6 of the Act.<sup>9</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

According to the Exchange, the practice of stopping stock by specialists is rarely used. Therefore, the Exchange

decided that it would not develop an electronic, systemic process to support this little used, voluntary function. The Exchange also argued that retaining a manual process to stop stock in the Hybrid Market would be inefficient. Accordingly, the Commission finds that eliminating specialists' ability to stop stock is reasonable and consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSE-2006-04), as modified by Amendment Nos. 1 and 2, be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55338; File No. SR-Phlx-2007-04]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing LEAPS Pursuant to the \$2.50 Strike Price Program

February 23, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 21, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Phlx. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to clarify that LEAPS<sup>5</sup> can be listed at \$2.50 strike price intervals pursuant to the \$2.50 Strike Price Program set forth in Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading). There is no new rule text.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposal is to clarify that LEAPS can be listed at \$2.50 strike price intervals pursuant to the \$2.50 Strike Price Program.

The current \$2.50 Strike Price Program is set forth in Commentary .05 to Phlx Rule 1012. The \$2.50 Strike Price Program permits the Exchange to list options with \$2.50 strike price intervals for selected options trading at strike prices greater than \$25 but less than \$75. In addition, each options exchange is permitted to list options with \$2.50 strike price intervals on any option class that another options exchange selects under the \$2.50 Strike Price Program.

Initially adopted in 1995 as a pilot program, the pilot \$2.50 Strike Price Program allowed options exchanges to list options with \$2.50 strike price intervals for options trading at strike prices greater than \$25 but less than \$50 on a total of up to 100 option classes.<sup>6</sup> In 1998, the pilot program was permanently approved and expanded to allow the options exchanges to select up to 200 option classes for the \$2.50 Strike

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> LEAPS are Long-term Equity Anticipation Securities or long-term options series. See Phlx Rules 1079, 1012, and 1101A.

<sup>6</sup> See Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (SR-Phlx-95-08, SR-Amex-95-12, SR-PSE-95-07, SR-CBOE-95-19, and SR-NYSE-95-12).